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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3808

13 **VALERIE MARIE SMITH**
3901 Von Savoye Lane
14 Modesto, CA 95355
Pharmacy Technician Registration No. TCH
74169

A C C U S A T I O N

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about July 18, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 74169 to Valerie Marie Smith (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on January 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9 5. Section 125.3 of the Code provides, in pertinent part, that the Board/ Registrar/
10 Director may request the administrative law judge to direct a licensee found to have committed a
11 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
12 investigation and enforcement of the case.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Conviction of a Crime)

15 6. Respondent is subject to disciplinary action under section 4301(l) in that on or about
16 March 1, 2010 in the case of *People of the State of California v. Valeria Marie Smith* (Stanislaus
17 County Superior Court Case No. MDP 09-102040), Respondent was convicted by guilty plea of
18 violating Penal Code section 459 (second degree burglary), a felony, and Health and Safety Code
19 section 11350(a) (possession of a controlled substance – heroin), a felony. The circumstances are
20 that on or about December 4, 2009, Respondent did willfully, unlawfully, and feloniously enter a
21 building, belonging to another, to wit, F.Y.E. Retail Store, located in Stanislaus County, and with
22 the intent then and there and therein to commit theft or any other felony offense and that
23 Respondent did willfully, unlawfully, and feloniously have in her possession a controlled
24 substance, to wit, heroin.

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